

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re LAUREN H. et al., Persons Coming
Under the Juvenile Court Law.

B265344, 266441

(Los Angeles County
Super. Ct. No. CK65569)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROCHELLE H.,

Defendant and Appellant.

CONSOLIDATED APPEAL from an order and a judgment of the Superior Court of Los Angeles County, Emma Castro and Stanley Genser, Referees. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Tyson B. Nelson, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother Rochelle H. appeals the termination of her parental rights as to her daughters, six-year-old Lauren H. and three-year-old J.H., arguing that the juvenile court erred in failing to reinstate reunification services based on her Welfare and Institutions Code section¹ 388 petition and by failing to apply the parent-child beneficial relationship exception to the termination of her parental rights, set forth in section 366.26, subdivision (c)(1)(B)(i). We affirm because substantial evidence supported the juvenile court's determinations that Mother's circumstances had not changed, that further reunification services were not in the children's best interest, that Mother did not play a parental role in the children's lives, and that a continuing relationship with Mother would be detrimental to the children.

FACTS AND PROCEDURAL BACKGROUND

1. Jurisdiction and Lauren's Detention

Mother has a long history of drug abuse and has been diagnosed with Mild Intellectual Disability. Although Mother has five children,² solely Lauren and J. are at issue in this appeal. Mother has been involved in the dependency court system since 2006, when her first daughter was born with a positive toxicology screen for cocaine. The present dependency case commenced in December 2011, when the Los Angeles County Department of Children and Family Services (DCFS) filed a section 300 petition on behalf of then-two-year-old Lauren due to Mother testing positive for and admitting to using cocaine. Lauren was removed from Mother's custody and placed in her paternal Aunt Tamara's custody. In March 2012, the juvenile court sustained allegations that Mother's unresolved substance abuse of cocaine and marijuana rendered her incapable of providing regular care pursuant to section 300, subdivision (b). Mother pled no contest to the petition. The court ordered reunification services for Mother, and Lauren remained in

¹ Subsequent statutory references are to the Welfare and Institutions Code.

² One of Mother's children was adopted and two were living with their fathers at the inception of this dependency case.

her Aunt Tamara's care. Mother's case plan included parenting education courses, individual counseling, drug rehabilitation and aftercare, and random drug testing.

During the pendency of Lauren's dependency case, Mother gave birth to J. in October 2012. In November 2012, DCFS filed a section 300 petition regarding J., alleging that she was endangered by Mother's substance abuse. In December 2012, the court sustained jurisdiction over J. J. remained in Mother's custody because Mother was compliant with her case plan: Mother was randomly testing negative for drugs, was enrolled in a substance abuse program that included parenting education and individual counseling, and consistently visited Lauren for two hours each Saturday.

In February 2013, Mother completed her drug rehabilitation program and was participating in aftercare. Mother continued to participate in random drug testing and group counseling through her aftercare program. Mother also enrolled in individual counseling to address her mental health issues. The preliminary assessment diagnosed her with polysubstance abuse and dependence, with cocaine, marijuana, and alcohol being the prominent substances.

As to visitation, Mother failed to visit Lauren during the first two months after J.'s birth. When Mother did visit Lauren, Mother sometimes showed up late and left early. Mother also slept during the visits. DCFS did not liberalize Mother's monitored visitation due to Mother's inconsistency and behavior during visits with Lauren. Despite these concerns, based on Mother's progress, the juvenile court ordered Lauren to be returned to Mother's custody in May 2013.

2. Second Detention and Termination of Reunification Services

Eight months later, in January 2014, DCFS filed a section 342 petition and requested that Lauren and J. be detained, alleging that Mother physically abused Lauren, exposed the children to domestic violence, and abused alcohol. Lauren had reported to DCFS that Mother had "whoop[ed]" her with different color belts, leaving bumps and bruises. During this time period, Mother appeared detached from Lauren during visitation: avoiding interaction with Lauren, moving Lauren off her lap, and ignoring Lauren. Mother also easily became agitated with Lauren, yelling at Lauren in response to

small age-appropriate behaviors. In addition, Mother was involved in an alcohol-fueled domestic violence incident with the father of one of her children, in front of the children. The incident required police intervention.

In response to the filing, the juvenile court ordered the children to be detained and placed them in Aunt Tamara's home, the same home where Lauren was placed at the inception of this dependency case. Mother was granted monitored visits with the children. In March 2014, the juvenile court sustained the section 342 petition, finding that Mother inappropriately disciplined then-four-year-old Lauren by striking her with belts. The court also found that Mother endangered the children by exposing them to her intoxicated male companion, who attacked Mother in the presence of the children. The juvenile court granted Mother reunification services to include random drug testing, parenting education courses, and individual counseling to address physical abuse and anger management. The court ordered monitored visitation with the children.

Following the children's detention, Mother began living with a new boyfriend who had a history with DCFS and lengthy criminal history. The new boyfriend supported Mother financially and assisted with her hip and back problems. During this timeframe, Mother continued to make contradictory statements to DCFS and others. DCFS also reported that Mother's mental disability prevented her from fully comprehending information the social workers explained to her.

Although she remained enrolled in programs, Mother failed to attend drug aftercare group activities, Alcoholics Anonymous and Narcotics Anonymous meetings, and missed eight out of ten drug tests. Mother also missed 12 visits with the children. When she did visit, DCFS monitors reported that Mother appeared overwhelmed handling both children. Lauren, who was five years old at the time, regressed to using baby talk and threw tantrums. Mother yelled at Lauren out of frustration. During this time, Mother also sold Lauren's social security number to an unidentified man, and opened a phone account under one of her children's names.

By November 10, 2014, Mother had gone two months without contacting the children's caretaker to set up visits with Lauren or J. After hearing testimony from Mother and another witness, the court terminated reunification services on November 14, 2014, and set a section 366.26 hearing.

3. Denial of Mother's Section 388 Petition

On January 22, 2015, Mother filed a section 388 petition for Lauren and J., asking that the court permit unmonitored visitation. Mother filed another section 388 petition with updated progress letters on March 2, 2015. In support of her petition, Mother provided evidence that she: completed a three-month outpatient services program for drug and alcohol treatment dated February 2015, enrolled in an aftercare program, completed four out of 12 parenting classes, attended of 18 Alcoholics Anonymous and Narcotics Anonymous meetings from November 2014 to January 2015, attended 12 sessions with and was involved in an outpatient rehabilitation program, tested negative for drugs on January 6, 2015, received Regional Center services to address her Mild Intellectual Disability, obtained treatment and therapy with the Los Angeles Department of Mental Health since 2012, and visited with her other daughters. Mother also provided a letter from Giant Steps Training Programs, a service for adults with developmental disabilities, showing that Mother had a "direct support professional" who attended visits with Mother and her children, and that Mother had suitable living accommodations for herself and the children. Mother furnished the court with a complaint she filed on January 23, 2015, with DCFS, which asserted that she had not seen Lauren and J. in January because the caretaker refused to transport them to visits.

At the hearing on Mother's petition, Mother testified that she completed the drug and alcohol program and enrolled in parenting education, aftercare, and individual counseling with Giant Step. Mother stated that she had learned how to appropriately discipline her children, by being "firm, fair, and friendly," and to manage her anger. Mother stated that she was a Regional Center client but denied having any mental health diagnosis. She also testified that she was calmer now than she was when the court terminated services in November, and more focused on the children. Mother stated that

since termination of reunification services, she consistently visited the children and never cancelled or missed a visit. Mother also said that she prepared a room for the children with beds, dressers, and clothes. Mother acknowledged that her boyfriend, who she intended to live with the children, had a criminal history involving a gun charge, rape, and “spousal” charges. Mother had no concerns about her boyfriend being around her children and stated that if the court ordered that her boyfriend not reside with the children, she would abide by that order.

The juvenile court also received stipulated testimony from Mother’s Giant Steps life coach. The life coach observed that Mother’s focus and dedication had improved in the four months she had been working with Mother. She attested that Mother was appropriate and brought the children food during visits. To further assist Mother, the life coach set up beds inside Mother’s home for the children.

In closing, counsel for Mother argued the court should grant her section 388 petition and return the children to her custody or reinstate reunification services. Counsel asserted that Mother’s participation in the court-ordered programs was a changed circumstance, and that Mother should have the opportunity to reunify with her children. Although counsel acknowledged that Mother’s biggest hurdle in the section 388 hearing was the best interests of the children prong of the analysis, counsel did not explain how reunification would be in their best interests.

DCFS requested the court to deny the petition, arguing that Mother’s circumstances are, at best, changing. DCFS asserted that this was exemplified in Mother’s testimony regarding child discipline and Mother’s assertion that she thought “there was nothing wrong with what the boyfriend had done.” DCFS opined that Mother was comfortable exposing her children to her boyfriend despite his extensive criminal history and his apparent refusal to cooperate with DCFS’s background check process. DCFS also argued that although Mother was in full compliance with her drug and alcohol program and testing, Mother was only in partial compliance with the court’s order mandating parenting education courses and counseling. DCFS asserted that the children had been removed from Mother for quite an extended period of time, and that it was not

in the children's best interests to disrupt their stability through further reunification efforts at that point in time.

In addition, Lauren's father requested the court deny Mother's petition. Counsel for the children likewise requested that the court deny Mother's petition and requested that Mother's visits remain monitored.

The court subsequently denied Mother's section 388 petition. In making its decision, the court analyzed the two prongs of analysis required to grant section 388 petition: the existence of changed circumstances requiring a modification of the court's earlier order terminating reunification services and whether the modification would be in the best interests of the children.

Analyzing the changed circumstances prong, the court set forth Mother's extensive history of failing to make progress with the court-ordered drug rehabilitation programs, parenting programs, and personal counseling. The court noted, "[r]eported in the eight volumes of her children's dependency cases are repeated failures to complete numerous residential and inpatient drug programs." Only after termination of reunification services, did Mother ask the court to "review a certification of completion in a 90-day outpatient drug and alcohol program where she enrolled in November of 2014 right after the termination of her family reunification services on November 14, 2014." The court stated that it took Mother three years to complete 12 sessions of parenting classes. The court opined that notwithstanding Mother's current participation in the case plan services ordered two and a half to three years ago, she has not completed all of the services previously ordered. The court further noted that although Mother was deemed eligible to receive Regional Center services in April of 2011 for a diagnosis of Mild Intellectual Disability, she only recently took advantage of case management services. The court further stated that "no witnesses provided live testimony in this hearing regarding Mother's rehabilitation from a very lengthy history of drug use going back to the first court case in 2006. [¶] No expert witness testified as to Mother's current mental health function and how her diagnosis and receipt of mental health therapy from the L.A. County Department of Mental Health impacts her current ability to provide for the

children's current emotional and physical well-being." The court summarized that "while Mother presented evidence of potentially changing circumstances, there is no evidence by a preponderance of the evidence standard that Mother has satisfied the first prong requirement of [section] 388."

As to the second prong, the court noted that after three years, Mother still has monitored visitation. The court stated that Mother's "live-in companion . . . has a documented, lengthy criminal history of convictions for numerous crimes [and] has been uncooperative in the social worker's efforts to assess the children's potential safety around him." The court explained that Mother's response to her boyfriend's criminal history during her testimony was perfunctory and problematic. The court further stated that although Mother "testified earnestly and to the best of her ability," the court "found her responses to the questions posed to her to be very rote, simplistic and lacking insight and thoughtfulness towards understanding basic concepts of appropriate parenting for young children." Based on all of the evidence, testimony, judicially noticed DCFS reports, sustained petitions, and counsels' arguments, "it would not be in either child's best interest to grant Mother's requested orders on her 388 petition; therefore Mother's petition is denied."

4. Termination of Parental Rights

At the August 2015 section 366.26 hearing, Lauren and Mother testified. Lauren testified that she enjoyed visitation with Mother, played and ate with Mother during the visits, wanted the visitation to continue, and wanted to live with Mother. Lauren also testified that she had lived with her aunt for a long time, and that her aunt, not Mother, took her to school, helped her with her homework, made her food, and bought her clothing and toys. Mother testified about her monitored visits with the children at McDonalds, during which the children ate with her, played games with her, and called her "mom."

Following testimony, Mother's counsel asked the court to find that the parent-child bond exception to termination of parental rights applied based on Mother's consistent visitation with the children. In response, the children's counsel asked the court to terminate parental rights because Mother failed to establish the parent-child benefit exception to adoption. Counsel described Mother's connection with the children to be more of a playmate relationship rather than a parental one. Lauren's father joined with the children's counsel and requested termination of parental rights. DCFS likewise advocated for termination of parental rights, asserting that the children only received an incidental benefit from their monitored visitation with Mother. In asserting a lack of a parental relationship, DCFS argued that the children's foster family has and continues to address all of the children's daily needs, not Mother.

The court concluded that "[i]t is clear from the evidence that Mother does not occupy a parental role in this child's life at this time. The children have been out of the home for several years now. They're doing well in their current placement. [¶] I believe it would be detrimental to adopt a different plan other than adoption. . . . Clearly the benefit of adoption would outweigh any possible detriment that might be caused by the termination of parental rights." The court ordered that Mother's parental rights be terminated as to both Lauren and J., freeing the children for adoption.

DISCUSSION

1. The Court Did Not Abuse Its Discretion in Denying the Section 388 Petition

Mother asserts that the juvenile court committed reversible error when it denied her section 388 petition. We review the denial of a section 388 modification petition for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) The decision will not be disturbed unless it is found to be capricious, arbitrary, or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) An appellate court may not substitute its judgment for that of the trial court, but must view all evidence in the light most favorable to the ruling, indulging in all reasonable inferences to support the decision, keeping in mind the principle that issues of fact and credibility are matters to be determined by the juvenile court. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.)

Section 388 allows the juvenile court to modify an order if a person having an interest in a dependent child establishes, by a preponderance of the evidence, that changed circumstances exist and the proposed modification would promote the child's best interests. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) "The parent seeking modification must 'make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]' [Citations.] There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) Factors relevant to whether the change would be in the child's best interest include "the seriousness of the reason leading to the child's removal, the reason the problem was not resolved, the passage of time since the child's removal, the relative strength of the bonds with the child, the nature of the change of circumstance, and the reason the change was not made sooner." (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616.)

a. Changed Circumstances

Mother asserts that she had established changed circumstances by showing she was sober, had support, and adequate housing for the children. Mother asserts that she "consistently visited Lauren and [J.] throughout the proceedings and worked hard to achieve sobriety." Mother argues that she addressed her mild intellectual disability by receiving services from Regional Center and assistance from a life coach.

Yet, the evidence indicated that it was only after three years of services culminating in termination of services that Mother finally made an effort to complete some services and engaged in others. As the juvenile court noted, Mother demonstrated that her circumstances were changing, but not yet changed. Even though Mother had an extensive history of drug abuse that caused her to lose custody of all five of her children, she only completed a three-month outpatient alcohol and drug rehabilitation program and began following through with her aftercare programs when faced with termination of her parental rights as to Lauren and J. Likewise, only after the court terminated reunification services did Mother begin to consistently visit her children. Contrary to Mother's

assertions, she did not consistently visit her children throughout the dependency case. She missed two months of visitation less than six months before filing her January 2015 section 388 petition. As the court pointed out, Mother appeared to be in a transition stage, but had not shown that she resolved the underlying cause of the dependency proceedings.

Mother also failed to produce any evidence that she had fully addressed her mental health and emotional issues such that she was capable of taking care of her children. Although Mother appeared to be managing her mental health issues by recently taking advantage of Regional Center services, Mother provided no evidence that her participation in Regional Center services improved her parenting skills. Furthermore, Mother demonstrated at best, a perfunctory understanding of how to properly parent her young children. Mother's testimony on parenting issues like discipline failed to demonstrate a deeper understanding of how to supervise her children. For instance, when asked whether the way she disciplined a five-year-old child was different than the way she disciplined a two-year-old child, Mother responded: "Yes it is. It is a difference because sometimes the five -- Lauren -- if she was in my custody and she did something that was inappropriate, and [J.] followed behind, I would put Lauren on a -- maybe five-second [sic] time out and put [J.] on a two -- like, a two-minute time out." As a whole, Mother's testimony indicated that she had not yet gained a deeper understanding of proper parenting practices. Mother's poor judgment was further exemplified by her opinion that it was safe for the children to live with her boyfriend, who she admitted had a criminal history involving a gun charge, rape, and "spousal" charges and who would not cooperate with DCFS. Mother's testimony and her failure to fully engage in services both indicated that her poor parenting skills had not improved during this lengthy dependency case.

Mother compares her case to *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774 (*Elizabeth R.*), asserting that like the mother in *Elizabeth R.*, Mother was " 'destined to lose her children' " no matter what she did following the sustained section 342 petition. In *Elizabeth R.*, the mother was hospitalized for mental illness for all but five months of

the reunification phase of the dependency proceedings but nonetheless substantially completed her case plan during the period of time when she was not hospitalized. As the mother had been released only recently from hospitalization, the juvenile court found it premature to return her child to her care, and terminated services in the mistaken belief it was constrained by a statutory 18-month time period for reunification services. The Court of Appeal concluded, under the “unusual” circumstances of that case, the court had discretion to continue the 18-month review hearing if it would be in “the best interests” of the children to grant additional time. (*Id.* at pp. 1798-1799.)

Unlike the mother in *Elizabeth R.* who was compliant to the extent permitted by her hospitalization, Mother was not hospitalized or otherwise prevented from complying with her case plan following Lauren and J.’s detention in association with the section 342 petition. Only in the 11th hour of this dependency case, facing termination of her parental rights, did Mother follow through with aftercare and engage in the services that were ordered years prior. In contrast to *Elizabeth R.*, Mother was not “destined to lose her children.” Mother was given years of opportunities to reunify and she failed to do so. Three years after the court ordered Mother’s participation in drug rehabilitation, parenting education, and counseling, Mother failed to complete all the services or otherwise demonstrate her parenting competency. In sum, the court did not abuse its discretion in concluding that Mother’s recent conduct showed possibly changing circumstances that was insufficient to establish the first prong of the section 388 analysis.

b. Best Interests of the Children

We also conclude the court did not err in finding that it was not in the children’s best interest to reinstate reunification services. Here, Mother’s serious drug problem, the original basis for jurisdiction, was not addressed for years because Mother failed to follow through with services. Moreover, Mother’s substandard parenting skills and poor judgment, an issue highlighted by the section 342 petition and Mother’s decision to sell Lauren’s social security number, continue to present serious and unresolved problems. Although Mother recognizes the need to manage her anger and focus on her very young children, she still has not meaningfully grasped how to parent them.

Furthermore, although Mother is bonded with the children and the children identify her as “mom,” she has failed to progress beyond monitored visitation, exhibited detachment from Lauren, and had periods of inconsistent visitation. As a result, over the course of this three-year dependency case, the children have lived most of their lives in the home of their paternal aunt. The record indicates that the paternal aunt and her family provided the love, support, and stability essential to Lauren’s and J.’s development at this early stage in their lives. The court did not err in determining modification of the previous order terminating reunification services would disrupt this stability.

Based on the foregoing, we conclude the juvenile court did not abuse its discretion in denying Mother’s section 388 petition.

2. The Court Did Not Err by Refusing to Apply the Beneficial Parent-Child Relationship Exception to Termination of Parental Rights

Mother does not dispute that the children were adoptable. Mother argues that her parental rights were wrongfully terminated because the court failed to apply the parent-child beneficial relationship exception. “On appeal, we review the factual basis for the trial court’s finding of adoptability and termination of parental rights for substantial evidence.” (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732 (*Josue G.*)). We “presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*)). If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. The parent has the burden of showing that there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

“The selection and implementation hearing under section 366.26 takes place after the juvenile court finds that the parents are unfit and the child cannot be returned to them.” (*Josue G.*, *supra*, 106 Cal.App.4th at p. 732.) At this stage, “the juvenile court [is] left with three alternatives: adoption, guardianship or long-term foster care.” (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728.) “Adoption, of course, requires terminating

the natural parents' legal rights to the child; guardianship and long-term foster care leave parental rights intact.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.) Adoption is the preferred permanent plan for the children, and if the child is likely to be adopted, the court must terminate parental rights unless an exception applies. (*In re Marina S.* (2005) 132 Cal.App.4th 158, 164.) Where a parent fails to reunify and the child is likely to be adopted, the parent has the burden to show one of the enumerated exceptional circumstances exists. (*Autumn H.*, at p. 574.)

At issue is whether substantial evidence supports the court's determination that the beneficial parent-child relationship exception set forth in 366.26, subd. (c)(1)(B)(i) did not apply. Subdivision (c)(1)(B) provides that the juvenile court shall not terminate parental rights when the court finds that one or more of six enumerated circumstances exist to establish that there is “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) The beneficial parent-child relationship is one of these enumerated circumstances. The beneficial parent-child relationship exists where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) In sum, Mother needed to demonstrate two elements: (1) she had a parent-child relationship evidenced by regularly visiting and having contact with the children, and (2) the children would benefit from a continuing relationship with her.

We have previously explained, “[t]o overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent.” (*In re*

Angel B. (2002) 97 Cal.App.4th 454, 466, italic omitted.) In analyzing whether the parent-child relationship is important and beneficial, a court must examine: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction, and (4) the child's particular needs. (*Id.* at p. 467.) "[T]he relationship must be such that the child would suffer detriment from its termination." (*Ibid.*)

Here, we do not have the exceptional case where a beneficial parent-child relationship existed at the time of the section 366.26 hearing. First, the record indicates that although Mother made efforts to visit the children, she was inconsistent with visitation and acted detached from Lauren in the months before her reunification services were terminated. Although Mother gained consistency in visitation following the termination of services, she used the visits solely for playtime and visits to McDonalds, Chuck E. Cheese, the mall, or the DCFS office. Mother failed to engage in the children's daily lives or to play a substantial parental role. Her efforts were compromised, in part, because Mother never fully addressed the basis for the dependency case or progressed beyond monitored and limited visits. Her testimony at the hearing only underscored her failure to appreciate the severity of her mental health disability, drug abuse, and parenting issues and failure to perceive their impact on the children.

"[T]he parents must do more than demonstrate 'frequent and loving contact' [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.] [They] must show that they occupy 'a parental role' in the child's life." (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) "The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) It is particularly difficult to achieve such strong and beneficial parent-child relationship or demonstrate that termination of parental rights would be detrimental to the child when Mother has failed to advance beyond supervised

visitation over the course of this three-year dependency case. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Second, substantial evidence supports the determination that the children would not benefit from a continuing relationship with Mother. Lauren was two years old and J. was a newborn when the juvenile court took jurisdiction over them. Three years have elapsed and the girls have spent a substantial portion of their lives in the home of Aunt Tamara, who intends to adopt them and continue to provide a stable and positive home environment. Under Aunt Tamara's care, the children have thrived. In contrast, the children have been subjected to domestic violence and physical abuse in Mother's care, and Lauren has regressed to baby-like behavior in Mother's presence during some visits.

Mother likens her case to *In re C.B.* (2010) 190 Cal.App.4th 102 (*C.B.*), which found that the juvenile court injected an improper factor—the prospective adoptive parents' willingness to allow the children to have continued contact with the mother—into the analysis of this beneficial parental relationship exception. (*Id.* at p. 128.) *C.B.* held: “[I]f a juvenile court determines that a parent has ‘maintained regular visitation and contact’ (§ 366.26, subd. (c)(1)(B)(i)), that there is a ‘substantial, positive emotional attachment’ between child and parent benefitting the child [citation], and that the benefit from continuing that parent-child relationship in a tenuous placement ‘promotes the well-being of the child to such a degree as to outweigh’ the benefit that child would gain from the stability and permanency of adoption [citation], then the parent-child relationship exception is established. In those circumstances, the court cannot nevertheless terminate parental rights based upon an unenforceable expectation that the prospective adoptive parents will voluntarily permit future contact between the child and a biological parent, even if substantial evidence supports that expectation.” (*C.B.*, at p. 128.) Here, the juvenile court made no determination that the benefit from continuing the parent-child relationship was sufficient to outweigh the benefit they would gain from the stability and permanency of adoption. Thus, unlike in *C.B.*, there is no basis for the parent-child relationship exception in this case.

Mother also likens her case to *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*). In *S.B.*, a three-year-old child was removed from the custody of her father who had been her primary caregiver. The father immediately acknowledged his drug use was untenable and fully complied with his case plan, achieved sobriety, and regularly visited his daughter three days a week. (*Id.* at pp. 295, 298.) A year after living apart from the father, the child continued to become upset and wanted to go home with her father at the end of each visit. (*Id.* at p. 298.) The Court of Appeal in *S.B.* reversed the termination of parental rights, finding substantial evidence to support application of the subdivision (c)(1)(B)(i) exception based on the emotionally significant relationship nurtured in frequent and loving visits between parent and child. The court’s decision was based on evidence of a true parental relationship developed during the first three years of the child’s life, when she lived with her father, that continued to flourish when they lived apart. (*S.B.*, at pp. 298-299.) Based on this record, the court concluded, “[T]he only reasonable inference is that *S.B.* would be greatly harmed by the loss of her significant, positive relationship with [her father].” (*Id.* at p. 301.)

Since its publication, *S.B.* has been subject to considerable criticism, particularly for its suggestion the beneficial parental relationship exception to adoption applies if the child will merely “derive[] some measure of benefit” from the parental relationship. (*S.B.*, *supra*, 164 Cal.App.4th at p. 301.) Indeed, the appellate court that published *S.B.* has acknowledged that litigants have inaccurately and improperly cited its language in the decision. (*In re C.F.* (2011) 193 Cal.App.4th 549, 558.) In repeatedly emphasizing that “*S.B.* is confined to its extraordinary facts,” that appellate court has stated that *S.B.* “does not support the proposition a parent may establish the parent–child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parental contact. . . . [C]ontact between parent and child will always ‘confer some incidental benefit to the child,’ but that is insufficient to meet the standard.” (*Id.* at pp. 558-559; See *In re Jason J.* (2009) 175 Cal.App.4th 922, 937 [stating the same].)

We conclude that *S.B.* is inapposite to the case before us. Unlike the genuine bond between *S.B.* and her father, there is no evidence here that Mother had anything more than a playmate relationship with her children. Although the children may have derived some benefit from this relationship, the record does not support a finding that it outweighs the benefit and stability they would derive from adoption, or provide grounds to reverse the sound judgment of the juvenile court.

Lastly, to the extent Mother asserts that the juvenile court should have considered guardianship over adoption, we disagree. As stated above, adoption is the preferred permanent plan for the children. (*In re Marina S.*, *supra*, 132 Cal.App.4th at p.164.) “If a child is likely to be adopted, parental rights must be terminated unless one of several enumerated exceptions applies.” (*Ibid.*) “After the parent has failed to reunify and the court has found the child likely to be adopted, it is the parent’s burden to show exceptional circumstances exist.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.) Mother has failed to meet her burden to show exceptional circumstances.

We note that on appeal Mother is essentially asking us to reweigh the evidence and to accept her judgment regarding the applicability of this exception to termination of parental rights instead of the judgment of the trial court. We decline to do so. We do not review the record to determine whether there is substantial evidence to support a contrary finding by the juvenile court (i.e., the section 366.26, subdivision (c)(1)(B)(i) exception applies), but rather we review the entire record to determine whether there is substantial evidence to support the finding the court made (i.e., the section 366.26, subdivision (c)(1)(B)(i) exception does not apply). (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at p. 947; *Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) The burden on appeal is on Mother to show that the judgment was not supported by substantial evidence and thus demonstrate that the beneficial parent-child relationship exception does apply. We conclude Mother has failed to do so and that substantial evidence supports the juvenile court’s determination.

Therefore, we hold that the juvenile court did not err by refusing to apply the beneficial parent-child relationship exception to termination of parental rights.

DISPOSITION

The juvenile court's order denying Mother's section 388 petition and judgment terminating Mother's parental rights are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

HOGUE, J.*

We concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.